

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

MULHERN GAS CO., INC., et al.,

Plaintiffs,

v.

ROBERT J. RODRIGUEZ, et al.,

Defendants.

Case No. 1:23-cv-01267 (GTS/CFH)

**NOTICE OF SUPPLEMENTAL
AUTHORITY REGARDING
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs submit this notice to alert the Court to recent factual developments related to the issues raised by Defendants' fully briefed Rule 12(b)(1) motion, Dkt. 19.

Attached as **Exhibit A** is a true and correct copy of the draft minutes from the June 28, 2024 meeting of the New York State Fire Prevention and Building Code Council published on the Council's website.¹ The Council discussed "the draft regulations for the implementation of the prohibition on the installation and use of fossil-fuel equipment and building systems in certain new structures and buildings" and noted that a "formal NRD [Notice of Rule in Development] was published on the rule making portion of the Divisions [*sic*] website for these draft regulations" and "shared in the code council member's packet." Ex. A at 3-4; *see also id.* at 4 (noting that the prohibition is "required by Executive Law § 378 and Energy Law § 11-104"). Council members were "encouraged to submit any comments as soon as possible, particularly within the next couple months," to ensure the process remains on schedule. *Id.* at 4.

Exhibit B is a true and correct copy of the Notice of Rule in Development published on the New York Department of State's Division of Building Standards and Codes' website.²

¹ <https://dos.ny.gov/system/files/documents/2024/07/draft-code-council-june-28-2024-meeting-minutes.pdf>.

² <https://dos.ny.gov/notice-rule-development>.

Exhibit C is a true and correct copy of the “Proposed Amendments to 19 NYCRR Part 1229 – Other Uniform Code Provisions,” which would implement the challenged gas ban as to the Uniform Code.³ **Exhibit D** is a true and correct copy of the “Proposed Amendment to 19 NYCRR Part 1240 – fossil-fuel equipment and building systems,” which would implement the challenged gas ban as to the Energy Code. *See* Ex. B at 2 (describing the proposed amendments).⁴

These developments confirm that the Council members are responsible for—and have already begun—enforcing the challenged statutes by adopting implementing regulations, and thus that the Council members may be sued for prospective relief under *Ex parte Young*. Dkt. 22 at 6-8. They also confirm that enjoining the Council members would redress Plaintiffs’ injury while avoiding any need for duplicative litigation against local governments. *Id.* at 10-13.

Dated: July 31, 2024

Respectfully submitted,

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³ https://dos.ny.gov/system/files/documents/2024/06/2024-06-21_text-of-rule-uniform-code-fossil-fuel_draft.pdf.

⁴ https://dos.ny.gov/system/files/documents/2024/06/2024-06-21_text-of-rule-energy-code-fossil-fuel_draft.pdf.